THE SENATE COMMITTEE RAILROAD BILL

ALBERT B. CUMMINS *
U. S. Senator from Iowa, Chairman Senate Committee on Interstate Commerce

I THINK no one realizes more completely or fully than I do the magnitude and the difficulties of the task of railroad regulation. There are in this country something like 260,000 miles of main-track railway. These systems of railways serve 100,000,000 people and furnish them with their chief means of transportation and communication. It is obvious that any system of transportation in a commercial, civilized country is the basic fundamental industry of that country, for without adequate facilities for communication and transportation and without a service rendered for reasonable compensation the growth and development of the country is impossible.

The problem that we have before us is vastly more complicated and intricate than is presented in the transportation problem of any other country in the world. This is due to the extent of our country, the variety of its production, and the dissimilarity of conditions under which business is carried on, as well as the dissimilarity of conditions under which transportation is furnished.

I believe that transportation is a governmental function. A single reflection upon the conditions throughout the world as well as in our own country will demonstrate that the furnishing of transportation to a commercial people is a governmental function. Aside from those in the United States, substantially all of the railways of the world are owned and operated by the governments of the various countries. I might qualify that by saying that Great Britain has not yet become the owner of her railways, but her policy at this time is one that is the equivalent of government ownership and operation.

While I believe transportation to be a governmental function, I am nevertheless of the opinion that the policy of private ownership and operation of railroads should be continued in the United States. The only reason that I am in favor of private ownership and private operation is because I believe that better and cheaper transportation can be furnished to the people of this country

* This article is an abridgment of the speech delivered by Senator Cummins in the Senate, as printed in the Congressional Record of December 4, 1919. It was prepared by the Editor with the consent of Senator Cummins.

through the instrumentality of private ownership and private operation than can be furnished to the people of the country through direct Government operation; but there is nothing inconsistent with the best forms of government in Government ownership and operation of our systems of transportation. The Government has the right to select the agencies or instrumentalities which will most certainly render to the people the service they require, and, if the Government believes, as I believe, that the services can be rendered and will be rendered more adequately and more cheaply through private corporations under strict public supervision it has the right, of course, and it is its duty, of course, to select such agencies for the purpose of rendering the service which all the people require.

Private operation of railways cannot be continued as a permanent policy unless there is a radical change in our system of regulation. There is but one course which will insure successful private operation. Our Interstate Commerce Commission has been a faithful, intelligent body of men. They have made mistakes now and then, which I have not hesitated to criticize; but, on the whole, I think they have attempted to do their duty as they have seen their duty. It has been, however, utterly impossible for the Interstate Commerce Commission to establish a body of rates in the United States that would enable the railway systems of the Nation to maintain themselves. It has been utterly impossible for any body of men to make a system of rates that will sustain the weaker railroads of the country without giving the stronger railroads an income excessive and intolerable in its extent; and there lies the great, fundamental obstacle in our system of rate making. The Interstate Commerce Commission can no more give to each railway of the United States the return to which it is fairly entitled than it can annihilate distance or overcome any other law of nature; and for that reason, when the Government took possession of the railroads, some of the railroads were earning enormous and excessive incomes, while other railroads were struggling against adversity, and were utterly incapable of rendering to their communities the service to which those communities were fairly entitled; and it was obvious, I think, to the students of the subject, long before the Government took possession, that we must adopt some plan that would remove this inherent, fundamental difficulty.

According to the decisions of the Supreme Court of the United

States, and according to the views of every other tribunal in all the world of which I have ever heard, they have this general idea with regard to the regulation of public utilities: That is to say, if a public utility is fairly constructed, if it is properly and efficiently managed, it has a right under the Constitution to earn a fair return upon the investment, upon the value of the property which renders the services—not upon the value of the property as determined by a capitalization of its earnings under a given body of rates—but it has a constitutional right to earn, as against regulation, a fair return upon the value of the property—that is, its investment—if it has been honestly constructed and is efficiently operated. The Supreme Court of the United States has declared that doctrine over and over again. It is idle for us to attempt, even if we were to desire to attempt, to escape the principle which the courts have laid down. It is a just principle; it is fair and honest; and I, for one, do not desire to escape it.

In the case of a railroad that is earning, we will say, 1 per cent upon that fair investment under honest management, why is it not earning more than 1 per cent? It is not earning more than 1 per cent for two reasons: First, our regulating tribunals have determined the rates upon which it shall do business. We have interfered with its liberty in the transaction of its business to that extent; but if we have not interfered directly we have attached those rates to some competitor which can do business upon, we will assume, the body of rates which I have premised, and that renders the unfortunately situated property incapable of earning more. Now, I believe that any such system is not only unfair but it is unconstitutional as well.

We are agreed that we can not raise the rates upon the weaker properties so that they will be self-sustaining, because that would give to the stronger properties, which move 70 per cent of the business of the United States, an income so excessive that it would not be tolerated for a single month. Therefore that solution must be discarded. We can not give to the stronger properties the rates which would return for them no more than a fair interest upon the value of their property and that alone, because that means death to the weaker properties which must compete with them in traffic, and, of course, upon the same terms, so far as rates are concerned. So we must inquire further. We must find some other way in which we can maintain the general trans-

portation system of the United States and promote the welfare of our people. We must find some other way in which to do it. How can we accomplish it?

You may inquire as you will, you may study it as deeply as you may, but you will finally reach the conclusion that it can only be done through consolidation. There are various kinds of consolidation. The problem can be solved by Government ownership because that is complete consolidation. If the Government owned and operated all the railroads of the United States it would, I take it, establish charges for transportation which would pay the cost of maintenance and operation and the interest upon whatever indebtedness might be created in acquiring the properties. It would then be compelled either to raise the rates and charges or to appropriate from the Treasury, if our past history is to be accepted as a lamp for our guidance in the future, something like a billion dollars a year in order to construct such additions, betterments, and enlargements as the progress and growth of the country would demand.

That is one way in which this problem can be reached, and it is a perfectly logical way in which to reach it, because it then reduces the transportation of the United States to a common level, and the United States becomes responsible for furnishing facilities in every quarter of the country.

There are two kinds of consolidation which may be pursued in private ownership with continued private operation. The first is complete consolidation of all the railway properties of the United States in one corporation. That is a plan which has some advantages. There are unquestionably some advantages in complete unification, complete control over all the railroads of the United States as a single transportation facility.

The plan adopted by the Senate Committee, however, is consolidation into comparatively few systems. The bill provides that they shall be consolidated in not less than 20 nor more than 35 systems. I think it ought to be not less than 16 nor more than 30 or 35 systems, but that probably does not affect the merit of the proposal itself.

I am in favor of comparatively few systems because it will permit the play of competition in service, and, although you will regard me as exceedingly heterodox and possibly as unobservant of the history of the past, I say competition in rates also.

This suggestion which has gone abroad over the country and which everybody has received and apparently accepted that there is no competition in rates under the regulation which we have provided is not well founded.

I am in favor of several systems so related to each other that they can carry traffic for substantially the same cost as compared with the value of their property, because it does permit, it invites, it commands that honorable rivalry in business which in my judgment is the mainspring of success in every enterprise. I am looking toward advances of socialism with extreme regret mainly because I believe that that theory of Government destroys the initiative, the energy, the progress of mankind. I want to preserve in the railway service all of those moving forces which can possibly be retained.

I do not attach so great importance to the competition or rivalry so far as rates are concerned as I do to the rivalry in service. The latter begins with a desire to please the people who either ride upon trains or whose property is transported from one place to another. It means attention, it means courtesy, it means a concern for the public mind that could not be secured in any other way than through the opportunity of the public to pass from one service to another. It means infinitely more when we come to consider the ease with which one patron is served and the ease with which the desires of another may be denied; the furnishing of cars promptly, the movement of cars speedily, the effort made in every quarter, through every employee, to do the work at hand in the most efficient manner in which it is capable of being done.

This is the reason the committee has decided that it would be better to consolidate the railroads of the United States into not less than 20 nor more than 35 systems, in order to accomplish, first, the possibility of imposing a given body of rates upon the carriers with the outcome that each of the systems would earn substantially the same net return as compared with the value of the property employed in the service; and, second, in order to give this great business, this overpowering business, the same motive for efficiency and excellence that we observe, and hope we always will observe, in every other great venture.

There can be little question of the practicability of a division of the railway properties into not less than 20 nor more than 35 systems that will accomplish the purposes I have described. The

committee has not acted without the utmost consideration on that question and without all the information that it could secure. The committee—and I speak more confidently of my own convictions—knows that it is practicable to divide the railways of the United States into not less than 20 nor more than 35 systems, so that tested by the business of the three years before the war—and that is the period to which we must all resort in order to obtain information upon that subject—the net earnings of each system compared with the value of the property rendering the service, I care not how the value of the property is ascertained—will be so nearly equal that the difference will be negligible. I venture the prophecy that if the provisions of this bill shall ever go into effect the governmental body which is appointed to make the division and to carry out the provisions of the bill will be able to divide the country into 20 systems, and there will not be the difference of one-quarter of 1 per cent in the earnings, the net income, of the several systems as compared with the value of the properties as fixed by the Interstate Commerce Commission.

Then, if we pursue the policy of private ownership, we will have a body of railroads upon which the Interstate Commerce Commission can act, doing justice both to the people and to those who have invested their money in the properties. Then the Interstate Commerce Commission can make rates that will pay to the carriers, as nearly as human foresight can provide, just enough to make a fair return upon the value of the property.

I have pointed out at some length the views of the committee—and they are my own views as well—upon this fundamental proposal, because it is the heart of the bill. If it is not thought desirable to make this advance toward the regulation of these public utilities, my judgment would be that it is not advisable to pass the bill at all, for if the roads are to be returned under the regulations which formerly existed, believing, as I do, that private operation under such conditions is impossible and that it will end in utter collapse, I will necessarily find myself advocating the assumption upon the part of the Government of the duty of owning and operating our transportation facilities.

How is this consolidation to be accomplished? The bill proposes to create a Transportation Board, which is to undertake to divide all the railways of the United States, with some immaterial exceptions, into not less than 20 nor more than 35 systems.

The discretion between 20 and 35 is vested in the Board by section 9 of the bill, which reads as follows:

SEC. 9. It is hereby declared to be the policy of the United States in the exercise of its authority to regulate commerce among the States and with foreign nations and its other constitutional powers, that the railways of the continental United States shall, as soon as may be practicable, and in the manner hereinafter provided, be divided in ownership and for operation into not less than 20 nor more than 35 separate and distinct systems, each of said systems to be owned and operated by a distinct corporation organized or reorganized under this act.

In the aforesaid division of the said railways into such systems competition shall be preserved as fully as possible, and wherever practicable the existing routes and channels of trade and commerce shall be maintained. The several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the value of the properties through which the service is rendered shall be the same so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of the railway properties involved in the comparison.

This might be called the charter of the new system. It is further developed in section 10 by providing that the Transportation Board shall make this division and then give public notice to all who are interested of a hearing upon it, and at that hearing all who may be interested either from the capital standpoint or the labor standpoint or the shipping standpoint will be heard, and after that hearing is concluded then the Board adopts a plan, whatever plan may seem to it wise, and if that plan of division is approved by the Interstate Commerce Commission it becomes final, save as it may be modified upon subsequent application by anyone who may present a good cause for reconsideration in that respect.

For a period of seven years the consolidations are voluntary. If any railway company desires to organize a Federal corporation under the provisions of this bill, a new corporation can be organized. If, on the other hand, a corporation already organized desires to reorganize so as to become a Federal corporation, it may do so under the terms of this bill; but the consolidation that takes place during the seven years must be either through the medium of a corporation organized under the terms of the bill or through a corporation reorganized under the terms of the bill. We have made practically the same provision for reincorporating State corporations that was made long ago for the reincorporation of national banks, turning a national bank from a State institution into a Federal institution. One or the other of these two things must precede any consolidation which takes place under the bill.

I may say a word with regard to the seven years. The only reason for postponing compulsory consolidation for a single moment, in my judgment, is that the work of the Interstate Commerce Commission in valuing the railroad properties may be completed. It is said that this work will have been finished in the course of two or three years.

It may, however, be five years before it is finally and fully done; and inasmuch as these incorporations, whether reorganizing or originally incorporating, must be based upon the actual value of the railroad properties, it was quite essential that some time be given to the Interstate Commerce Commission to complete its work. In the case of a voluntary consolidation, it would be the duty of the Interstate Commerce Commission at once to go forward to the ascertainment of the value of the property immediately concerned in the voluntary consolidation, and to complete that particular part of the work at the earliest possible moment. And this leads me, now, to suggest an additional reason for the value which I attach to the consolidation.

All of us know that there has been a great deal of controversy, very much suspicion, infinite distrust among the people with respect to the value of railroad property as compared with the capitalization. Constitutionally we are unable to determine the value of railroad property, or even to indicate or declare the elements which a judicial tribunal shall consider in determining that value. Nevertheless, it is of the highest importance that in some way or other the feeling on the part of the people that they are called upon to contribute a revenue which is to be distributed upon unfounded capital shall be removed. It can only be removed in one of two ways. It must either be removed by ascertaining that the present capitalization is not greater than it should be—a contingency which does not meet my view of it—or it may be removed by reducing the capitalization to the real value of the property upon which the people are called upon to pay a return. This bill provides that the Interstate Commerce Commission shall ascertain the value of this property as the consolidations take place, and that the capitalization of these new corporations which are brought into existence in the manner I have described shall not exceed the value of the railroad property; and once this principle is adopted and once these consolidations shall have taken place, the terror which we all have in mind, known as the unearned increment, can no longer disturb the American people.

I want as much as anyone can want that the people shall be called upon to pay only upon an actual value; and while I know that we can not determine for the past years what value is and what elements it shall contain, for the future we can; and if these consolidations are carried into effect the future is safe, so far as unearned increment is concerned and so far as values are concerned. We will have that matter settled for all time.

Section 6 of the bill provides that the territory and the railroads of the United States shall be divided by the Interstate Commerce Commission into rate-making districts, as many as the Commission thinks desirable. Having established the districts and having ascertained the value of the property in a given district, the Commission is directed to make rates or to approve rates that will as nearly as may be return an aggregate net operating income for all the railroads of that district equal to 5½ per cent on the value of the property in that district. The committee believes that 5½ per cent fairly represents the policy of Congress with respect to a return upon railway property. Originally, as I introduced the bill from the subcommittee, instead of a 5½ per cent rate, the provision was for a fair return upon the value of the property, but it was believed by the majority of the committee that it would be better for Congress to declare the policy rather than to transfer it or commit it to any regulating body. So for the first time in the history of railway regulation it is suggested that Congress shall declare what it regards as a fair return upon the value of property rendering a public service, and that fair return, according to the provisions of the bill, is 5½ per cent upon the value of the property involved.

This 5½ per cent does not relate to capitalization; it does not relate to capital stock; it does not relate to outside investments vast in their extent which some of the companies own and hold for profit. It relates only to the property which renders service to the public.

The bill also gives to the Interstate Commerce Commission authority to increase that basis by one-half of 1 per cent, if it so desires to do, solely for the purpose of creating a fund for expenditures for what are known as nonproductive improvements and which are not under any circumstances to be capitalized, but which, in substance, will be held by the railway companies in trust for the public.

Now, let us see what 5½ per cent will do. Five and a half

per cent upon the value of the property in a given rate-making district does not mean that each railroad shall have 5½ per cent upon the value of its property. It means that one railroad will earn 8 per cent upon the value of its property, another railroad will earn 3 per cent or 5 per cent, some of them 2 per cent, some of them possibly, as high as 10 per cent. That arises from the disparity in the earning capacity of the roads. When you put a given body of rates upon the territory lying between Chicago and New York, we will say, rates which must be used in common by the New York Central, the Pennsylvania, the Baltimore & Ohio, the Erie, the Chesapeake & Ohio, and so on, one of those roads will earn very much more than 5½ per cent while another will earn very much less than 5½ per cent. That is the insoluble problem under present conditions. We can not escape it in a moment; nothing can remove it except the consolidation of which I have spoken. However, until that consolidation takes places we must deal with it as best we can. That brings me to another feature of the section to which I have been alluding and which I intend to discuss just as briefly as possible.

The bill proposes that any railway company which receives an operating income during any year of more than 6 per cent upon the value of its property shall divide equally the excess between 6 and 7 per cent between a company reserve fund and a general railroad contingent fund. The first portion belongs to the company itself, the latter belongs to the Government of the United States. The first is to be used by the company whenever its operating income falls below 6 per cent. It is to be accumulated from year to year until it reaches 5 per cent upon the value of the property. After that time the company retains one-third of the excess above 6 per cent and pays to the Transportation Board or to the Government two-thirds of the excess. The excess above 7 per cent goes one-fourth to the company reserve fund and three-fourths to the Government. The Government contingent fund has no limit and is to be used by the Transportation Board to advance the general transportation interests of the United States. However, it is not given so free a hand as my remarks might indicate, for it is provided in the bill that the promotion of the general transportation interests must be effected either by the purchase of equipment and of transportation facilities to be rented or leased to the weaker railroad companies, or it must be used by loaning to the weaker companies sums of

money to be expended in the purchase of facilities to render the service which the people require. That is the best that the committee could do in this transition period to equalize the spread in the earnings of the companies.

We were constantly impressed with the idea that we must accompish in some way the maintenance of the weaker companies. We know that, judged by the ordinary standards of credit, when they go into the markets of the country they will be unable to borrow the money necessary to keep their properties in that condition necessary for economical and efficient use. So we propose to take from the larger railroad companies a portion of their excess earnings above 6 per cent and devote them to increasing the facilities in the hands of the companies which are unable to purchase or construct them for themselves.

I regard it not only as one of the most vital but most equitable features of the bill, as much and bitterly as it has been attacked.

I will say one word with regard to the attacks upon that feature of the bill. Singularly enough, it is assailed from two quarters. The railway executives, representing the railroads, attack it bitterly on the ground that it is not only unjust but unconstitutional, and some very enthusiastic citizens of the country who have no interest in railways attack it on the ground that it is an approach toward socialism or communism and ought not, therefore, to be fostered, encouraged, or adopted.

A moment's consideration may not remove doubt with regard to its constitutionality, for I can not hope to remove a doubt in a moment that has been instilled by so distinguished an authority as an ex-Justice of the Supreme Court of the United States; but I at least can point out the path along which the committee traveled in reaching the conclusion that the provision was and is constitutional.

Ex-Justice Hughes has rendered an opinion in which he says that that part of the bill is unconstitutional because it takes property from its owner without just compensation. Ex-Senator Elihu Root, occupying an equally commanding position at the bar of the country, is just as confident that it is constitutional. The lawyers have ranged themselves, a great many of them, upon one side or the other of this question; but I am bound to say that so far as they have been organized up to this time, a decided preponderance in number, at least, will be found upon the side of the committee, which holds that the provision is constitu-

tional. To me there is no question about it. I do not want to disparage the learning of any man, certainly not his intelligence, but to me the proposition that this provision is unconstitutional means the destruction of all regulation. If it is true that we can not limit the earnings of a public utility, a common carrier, we might as well abandon our efforts to protect the people in any system of regulation.

I have no question at all with regard to either the justice of the provision or its constitutionality. We have pursued this narrow, cramped, and restrictive policy long enough. If Congress is not able to lift itself above the murky prejudices of former years, and examine transportation from a national standpoint, and establish those regulations which are necessary for the welfare of all the people, we must either go at once to Government ownership and operation, or leave the railway companies untrammeled and unrestricted to impose on the people of the country for their service just such charges as they may think best.

Section 24 of the bill relates to the issuance of railway securities. For years there has been a constant and general demand that in some way or other the Federal Government shall undertake the supervision of the issuance of railway securities. A bill to that end passed the House at one time and was reported favorably by the Committee on Interstate Commerce of the Senate. However, it did not receive consideration in the Senate, and therefore never became a law. But I think there is no real opposition to a provision which confers upon the Interstate Commerce Commission, or some other Federal agency, the supervision of the issuance of railway securities, in that way relieving the railway companies of the regulation of 40 of the 48 States of the Union.

Section 34 is an enlargement of the car-service act, which it is unnecessary for me to comment upon at any great length. The car-service act passed in 1917 was intended to give to the Government a larger function with respect to the movement of commodities, the movement of trains, the supply of cars, and all matters pretaining to the general disposition of our commerce. In this section too, we have attempted to give the Government the right to prevent construction of new lines. The very difficulties we have heard urged so often have arisen at times because railroads have been constructed where and when they ought not to have

been constructed. So we have given to the Interstate Commerce Commission, in connection with the Board, the jurisdiction to prevent the construction of new lines where obviously the construction would simply impose another burden upon the public without adding anything to the public welfare.

We have also given to the Government wider and broader power with respect to furnishing adequate and safe facilities, so that the Commission or the Board can command railroad companies to equip their lines with proper facilities and to procure the necessary cars and engines to transact their business with promptitude, all the while, of course, conditioned upon the power of the companies to comply with the demands or the commands of the Government. It would be idle to require a company that could not secure the money with which to do it to buy additional cars or additional engines, or anything of that kind.

We have rewritten in section 37 what is known as the long-and-short-haul clause. That will give rise undoubtedly to some discussion. We have not adopted the positive, rigid, long-haul provision. We still permit, under section 37 of the bill, some discretion on the part of the Interstate Commerce Commission. We have said to the Interstate Commerce Commission that it could grant the privilege to any company to charge more for a shorter than for a longer distance in the same direction, but that in doing so the rate for the longer distance must be found by the Commission to be a compensatory rate.

A compensatory rate, I assume, means a rate which will enable the railway company charging it to defray the cost of maintenance and operation and that will also bear its just share of the return upon capital.

Another modification that we have made in section 4 of the interstate commerce act is that where there are two competitive land lines, one longer than the other, that under no circumstances must the longer line charge more to an intermediate point not farther from the origin than the haul on the short line than it charges for the competitive point. It must not charge more for the same distance than the rate charged on the short line. That, I think, will correct a good many injustices that have occurred in the application of the law as it exists.

We are all familiar with what is known as the anti-pooling section of the Interstate Commerce Act. That section now reads:

SEC. 5. (as amended Aug. 24, 1912). That it shall be unlawful for any

common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

That is the law at the present time. The change that is proposed in this section of the act to regulate commerce is to insert after the word "that" the words:

Except upon specific approval by order of the commission as in this section provided.

Then there is added the following:

Provided, That whenever the commission shall be of the opinion, after hearing, upon application of any carrier or carriers, by railway or water, subject to this act, that the division of traffic or earnings between any such carrier or carriers will be in the interest of better service to the public, economy in operation, or otherwise of advantage to the convenience of commerce and the people, and will tend to equalize earnings between the said carriers and will not unduly restrain competition, the commission shall have authority, by order, to approve and authorize such division of traffic or earnings between carriers under such rules and regulations, and for such consideration as between said carriers and upon such terms and conditions, and for such length of time, as shall be found by the commission to be just and reasonable in terms.

The commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify or set aside the provisions of any previous order as to the extent of the division, or as to the rules, regulations, terms, conditions, or consideration currently moving in respect of any such divisions so theretofore approved and authorized. The same procedure as to filing of applications and serving of notice of hearing upon proper State authorities with opportunity to be heard shall be had as is provided in section 24 of this act relating to "securities."

It is apparent that this provision is not only an important one but is a radical departure from the policy which we have heretofore pursued. It is intended in this way to give to the Interstate Commerce Commission the authority, practically, to unify the railroads of the country prior to the consolidation which is provided for in the bill. All of us have observed that the one great advantage of Government ownership is the unification which may take place and the ability on the part of common carriers to choose that route for the traffic which is most economical and which will best serve the public interest. It was thought by the committee that, at least in the transition period—and this has no limitation in point of time—but especially for the transition period, the commission should have the power to control the railway companies in the respect I have just mentioned.

For years there has been a conflict between the jurisdiction

of the Federal Government and the jurisdiction of the State governments with regard to the adjustment of rates. All know that the Constitution of the United States confers upon Congress the authority to regulate commerce among the States and with foreign nations. Obviously, this authority is limited to the regulation or control of interstate commerce and matters that are inseparably connected with or incident to interstate commerce. The Supreme Court of the United States has had occasion in at least three separate cases to discuss the subject.

Many are familiar with what is known as the Shreveport decision. In that series of cases it was alleged that the State of Texas had established rates for intrastate traffic—that is, for the movement of traffic from one point in the State to another point in the State—which discriminated against the rates which the Interstate Commerce Commission had established for the movement of traffic from points beyond the State into the State, and the particular community which complained and which gave the name to the case I have mentioned was Shreveport. It complained that it could not do business with the State of Texas in competition with rivals located in the State, for the reason that the business men within the State were shipping freight at a much lower rate, comparatively, than the Interstate Commerce Commission had found to be reasonable from Shreveport into the State.

I need not follow that case in all its phases; but it finally reached the Supreme Court of the United States and the Supreme Court held that the authority of the Federal Government as it could be vested in the Interstate Commerce Commission extended to the removal of a discrimination between the interstate rates and the intrastate rates, but no authority had been given by Congress to the Commission to declare what the intrastate rate should be in comparison with the interstate rate.

The committee has attempted simply to express the decisions of the Supreme Court of the United States. We have not attempted to carry the authority of Congress beyond the exact point ruled by the Supreme Court in the cases to which I have referred; and the only thing we have done in the matter has been to confer upon the Interstate Commerce Commission the authority to remove the discrimination, when established in a proper proceeding before that body—an authority which it does not now have. As it is now, al lthat can be done is for the Commission to go forward from time to time and condemn and enjoin

the State rates until they finally reach the level which, in the judgment of the commission, is no discrimination.

Section 44 of the bill deals with the problem of the length of time that the commission may suspend rates which are filed by the carrier. As the law now is, each carrier has a right, and is required, if it desires to change the rates, to file its schedule of rates with the Interstate Commerce Commission. The Commission can then, upon summary investigation or inquiry, suspend those rates pending an investigation. Under the law, as it is, it has the authority to suspend them for 120 days, and then it was given the authority if it did not finish the inquiry within that time, to extend the time for another period of six months. The latter period has been shortened in this bill to a period of 30 days.

The reason for that is this: In the first place, the Interstate Commerce Commission has been overworked. There is no body of men in the employ of the Government, or exercising governmental functions, upon which so great a weight of labor has fallen as the Interstate Commerce Commission, and it is utterly impossible for it to fulfill its full duties as the law now is. But we have undertaken in this bill to create a new governmental function known as the Transportation Board, and we have given to that board many of the important duties which are now performed by the Interstate Commerce Commission, and endeavored in that way to relieve the latter body of some of its labor; and we hope that we have accomplished that purpose to such an extent as that the Commission will be able promptly to decide all the matters which are brought before it.

Broadly speaking, we have left with the Interstate Commerce Commission what might be described as semi or quasi judicial powers, rate making in all its phases, the valuation of railroad property in all its aspects, accounting absolutely necessary as an incident to rate making and to valuation. These are in the main the great branches of labor which are left with the Interstate Commerce Commission. The purely administrative duties, those duties which have to do with the physical operation of the railway properties, are transferred to the Transportation Board.

I desire to mention briefly section 45. It is entirely new, and it is an effort to coordinate land and ocean traffic. We have not given to the Interstate Commerce Commission any authority to regulate or control or to fix rates for what is known as port-to-port traffic, whether inland or exterior, and we do not propose to

do so. Everybody understands that we can not put upon ocean traffic or coastwise or coast-to-coast traffic or even upon river traffic the same regulations that are very advisable with regard to land traffic.

We are now hoping to enlarge our foreign business. We are endeavoring to make it as easy as possible for the business men of America to ship their goods anywhere throughout the world. The Shipping Board is trying, I think faithfully, to establish a series of ocean routes with boats having regular sailings and regular routes as well.

The great corporations of the country, the great producers, such as the United States Steel Corporation or other corporations of that character, are able to maintain their agents everywhere, which serve as a medium of information to such shippers, and they know when the boats sail and where they go and what the rates are, and are in every way able to reach a foreign country or foreign countries in the most convenient way. That is not true of the small shippers of the land. They do not know when these boats sail and where they go. They do not know what the ordinary rates are upon these ocean-going ships.

Section 45 provides that every ocean-going steamship company and every coastwise or coast-to-coast company with a regular route and with regular sailings shall file with the Transportation Board a schedule containing the dates of the sailings of its ships and the routes over which its ships travel, together with the ordinary rates which are charged for transportation. These schedules are required to be filed with the transportation board, and they are then given to the land carriers, the railroads, and the railway companies are required to maintain that compilation of information in every office designated by the Transportation Board. It is the thought of the committee that the Board would designate the important or the chief centers of production and of shipment.

Then any man who has a shipment destined for some foreign port, for Liverpool, Hongkong, Melbourne, or for San Francisco or New Orleans, even though he may not be able to maintain a commission man at the port or any other of the conveniences which the great shippers enjoy, may take to any railroad office in the country his shipment and deliver it to the land carrier, and the land carrier must issue to him a through bill of lading. It then becomes the duty of the land carrier to deliver the shipment

to the boat in whose care it is consigned, and the land carrier must absorb in the charge for the land carriage the cost of transfer from the railway train to the boat. In that way we will have established all over the United States a system which I think will tend to increase largely our export trade and coast-to-coast trade.

The part of the bill which I have reserved for final consideration is that which proposes that the Government shall adjudicate the disputes which may arise between employees of railway companies and the corporations, and which forbids a conspiracy or combination for the purpose of preventing the movement of commodities in interstate commerce.

I venture to say that no provision in any bill submitted to Congress in recent years has been more generally discussed throughout the country than the one to which I have just referred. There are some very extravagant praises for it; there are some very unjust denunciations of it. I look upon it as a vital part not only of this bill but vital part of our policy in the future so far as the basic industries of America are concerned. The committee has endeavored to find a solution of one of the most complicated and difficult problems ever presented to a legislative body. I am not prepared to affirm that the committee has discovered the only solution, and I am sure its members will be very glad to receive any suggestions that may make the arrangement which we have provided for more just or more efficient; but I speak for substantially every member of the committee, a very large majority of the committee, when I say that it is our profound conviction that the civilization of America—I was about to say the civilization of the world—can not continue, can not endure unless organized society can find some plan to preserve industrial peace and order. To me the thought that to accomplish justice for those who may be interested in any dispute it is necessary to either freeze or starve the American people is unthinkable and intolerable.

I have always, I believe, entertained for men who worked not sympathy—for men who work need no sympathy—but I believe that I have always held for them the keenest interest in the struggles in which they have been engaged and the most sanguine hope of their ultimate success in obtaining the justice to which I believe they are entitled. But that does not settle this controversy.

The committee recognized that transportation is the basic industry of the Nation. It may not be more important from one

aspect than many others, but none of the others can be conducted or carried on without transportation. Leave New York without transportation for two weeks and thousands of people will either starve or freeze, according to the season; indeed, they may do both. What I say of New York is true of Philadelphia, of Chicago, and of every great center of population.

We cannot contemplate that situation with any complacency at all. If we can not find some way in which to avoid a contingency of that kind, then our boasted and vaunted institutions are mere shadows, and we should escape from them as speedily as possible. There must be some way in which a democracy can administer justice to all its citizens, which will render them so far content that they will be willing to carry on their vocations with reasonable regularity and continuity.

I was the author of a somewhat famous statement or declaration in what is known as the Clayton anti-trust law that the labor of a human being is neither a commodity nor an article of commerce. I believed in the truth of that statement profoundly then, and I believe in it now with even deeper conviction. The labor of a human being is not a commodity; it ought not to be dealt with as a commodity; it ought not to be judged as a commodity; for it is a part of human energy that may solicit and ought to receive the same high consideration from the world, from every legislative body, as all other energies of the mind or the body. But I am just as much opposed to Mr. Foster dealing with human labor as a commodity as I am opposed to Mr. Gary dealing with it as a commodity.

It is just as fatal to the welfare of the United States to allow the American Federation of Labor to deal with labor as a commodity or as an article of commerce as it is to allow the National Association of Manufacturers to deal with it as an article of commerce or as a commodity. This declaration, for which I make no apology and of which I am as proud as I am of any other act of my life, means that labor is to be lifted above the rules which apply to mere inanimate things; it means that the laborer is a man and entitled to all the rights of a man, and that he should no more sell himself to a labor union than he should sell himself to a manufacturer. It applies to both and all with equal force and strength.

I do not want to be understood that I am opposed to labor unions. On the contrary, I think they are an essential part of

our industrial organization. I do not believe that we could long survive in peace and in order without labor unions. I think the gathering together of men in every occupation is not only defensible but I think it is highly beneficial and helpful in the maintenance of law and order. The laboring men in any particular enterprise or in any particular calling have just as much right to come together and work to promote their own interests and lift themselves up, if they can, in the great scale of human society as have the men of capital or the men of the professions, the men who labor, as it is said, with their minds instead of with their hands. I do not want it to be understood that there is in this bill or that there is in my mind any antipathy, any hostility, anything but admiration for labor unions.

I believe also in collective bargaining. There is no escape from collective bargaining. It is the decree of this age from which we ought not to attempt to escape. This bill is founded upon the necessity for labor unions, so far as the provisions to which I now have reference are concerned. It could not operate without the presence of labor unions. This bill recognizes collective bargaining; it can not be administered efficiently without collective bargaining.

It is said—it has been said to our committee—that this provision of the bill contravenes the natural rights of man, and is therefore unconstitutional. It is a very common thing to hear it said that this manacles the workingman, puts shackles upon his limbs, and reduces him to involuntary servitude. Nothing could be more wicked than an assertion of that character. This bill does not interfere with the rights of any employee of a railroad company or any official of any railroad company, because this bill applies equally to every person who serves a common carrier, if the common carrier is subject to the act to regulate commerce. The bill does not prevent, interfere with, or embarrass any man who desires to leave his employment. He can quit, or a hundred of them or a thousand of them can quit whenever they desire so to do. But I am not willing to allow the statement to go unchallenged that it is a fundamental and a constitutional right that every man can enjoy to quit his employment whenever he pleases. That is not true.

This bill does not interfere with his right at all; but a soldier can not quit whenever he desires. He can not cease his employment. An engineer upon a railway train can not quit when-

ever he may desire to quit. He can not leave his engine and his train so that human life would be imperiled, or so that property, even, might be injured. A physician or surgeon can not quit his employment whenever he may desire to quit, either morally or legally. He can not leave a dangerous operation half performed because it is his pleasure no longer to continue the work of his profession. I am mentioning these things simply to show that it is not true, broadly and fundamentally, that every man in the world can quit what he is doing at any moment he chooses to quit. The human right—and I am now speaking of the individual right rather than the group right—is subject to higher considerations than his pleasure.

This bill punishes only a combination or agreement between railway employees, and when I use the word "employees" I mean all the employees of the corporation, whatever their rank may be. Even if I were to grant that the individual right to cease employment or quit is perfect and complete, I could not grant that the right to enter into a combination or conspiracy to accomplish a purpose inimical to the welfare of society is a natural or constitutional right. This bill does not control the individual, but it controls the combination, the agreement, and it declares that if two or more persons, being employees of a carrier subject to the act to regulate commerce, shall enter into an agreement or a combination to suspend or prevent the movement in interstate commerce of commodities on which we are all dependent for life and for health for the purpose of enforcing some demand or claim against their employer, that such persons shall be guilty of a misdemeanor and shall be punished accordingly.

What right have I, who may believe I have a just claim against you, to enter into a conspiracy or combination or agreement with some other man or with some other men to deprive you of the necessaries of life until you yield to the demand which I have made upon you? It is monstrous. It cannot be defended in any court of morals. A course of that kind cannot be defended in any court of civilization and progress.

The bill provides what it believes to be impartial tribunals for the adjudication of all disputes between the carriers and their employees. These tribunals, the details of which I shall not discuss, have jurisdiction of all the disputes which may come up from time to time between the railway corporations and their

employees. Remembering that we have provided a tribunal which we believe to be a just, fair, and impartial tribunal for the adjudication of all controversies of the character I have described, I hope that this thought will be in every mind, that we are substituting the justice of the Government of the United States for the justice which wage workers have hoped to secure through the strike. We are simply exchanging one instrumentality for another. We are offering an opportunity to secure justice which does not involve this awful sacrifice, which does not involve the wreck and ruin of industry, of homes, and of character. We are offering to do in controversies out of which railway strikes may arise just what our courts of justice have done for centuries with respect to controversies between man and man. Hitherto we have not regarded it as necessary that our Government should undertake the adjudication which is here provided for, and I have been very slow and very reluctant to go forward to that duty. But I perceive, and I have long perceived, that it is necessary, if we are to have regularity and continuity of employment. Therefore I am willing, on the part of my Government, to undertake to do full and complete justice, so far as wages and working conditions are concerned, to those who enter into employment of this character. I believe, and believe from the bottom of my heart, that the laboring men of America will be more apt to secure justice or approach perfect justice through the intervention of these tribunals for the settlement of their disputes than they have ever been able to secure through the medium of the strike.